

Decision 01-11-010 November 8, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of the Montana Power Company and its wholly owned subsidiary, Touch America, Inc., for authority to conduct an Internal Reorganization of the company and effect a Change of Control pursuant to Section 854 of the California Public Utilities Code and Article 9, Rule 35 of the California Public Utilities Commission.

Application 01-08-031  
(Filed August 24, 2001)

**O P I N I O N**

**1. Summary**

This application seeks approval under Section 854 of the Public Utilities Code of an internal reorganization that will result in a change of control of Touch America, Inc. (Touch America), (U-6370-C) an interexchange telephone company certified in 44 states, including California. The application is unopposed. The application is granted.

**2. Description of Applicants**

The Montana Power Company (Montana Power) is a natural gas and electric transmission and distribution utility serving the western two-thirds of the State of Montana. It does not operate in California.

Touch America is the wholly owned telecommunications subsidiary of Montana Power Company. It was incorporated in 1983. On July 3, 2000, in

Decision 00-07-002, it received its certificate of public convenience and necessity to provide inter- and intra-local access and transport area services in California.

### **3. Proposed Restructuring and Change of Control**

In the spring of 2000, Montana Power announced that it would divest itself of all of its energy-related businesses to focus on telecommunications. To that end, Montana Power has completed the sale of its oil and gas division, its coal mining subsidiary, and its independent power group. An agreement has been reached with Northwestern Corporation of Sioux Falls, South Dakota, for the sale of its gas and electric utility. The utility sale is expected to close in the fall of this year.

At the completion of the divestiture process, the company will rename itself Touch America Holdings, Inc. The renamed company is incorporated in the State of Delaware. It will become the owner of the operating businesses of Touch America (telecommunications), Tetragenics Company (electronic control systems), and the owner of the single membership interest in Entech, LLC (miscellaneous properties).

All common stockholders in Montana Power will become the shareholders of Touch America Holdings, Inc. Similarly, the existing board of directors of Montana Power will become the board of directors for Touch America Holdings, Inc.

Applicants state that key executive officers of Montana Power will transfer to Touch America Holdings, Inc., and that current officers and directors of Touch America will not change as a result of the restructuring. Applicants state that there will be no layoffs or any increase in employee turnover within Touch America. Applicants state that the transfer of control will be transparent to customers and will have no adverse impact upon them.

Exhibits attached to the application describe the transaction in more detail and show that Touch America Holdings, Inc., will have the financial and technical qualifications necessary to continue its operations in California.

#### **4. Public Interest**

The application states that the transfer of control will serve the public interest by maintaining or improving the services offered by Touch America. Funds generated from the sale of the energy and utility business will be reinvested in Touch America Holdings, Inc., which will have no long-term debt and an estimated \$350 million in cash available for reinvestment in the business.

Applicants state that Touch America's participation in the telecommunications market in California will further the goals of diversity in the supply of telecommunications services to citizens, business and government agencies in the state.

According to the application, the proposed restructuring will have no adverse effect on consumers. All rates, terms and conditions for telecommunications products and services reflected in Touch America's tariffs and price lists will remain the same.

#### **5. Discussion**

Pub. Util. Code § 854 requires Commission authorization before a company may "merge, acquire, or control...any public utility organized and doing business in this state...." The purpose of this section is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The proposed transfer of control here promises improved services for California consumers. No changes in the existing services of Touch America are proposed.

Touch America will continue as the operating company after the proposed restructuring. Because of this, there is no need to change or modify the existing certificate and corporate identification number (U-6370-C).

In Resolution ALJ 176-3070, dated September 6, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3070.

The application is granted, subject to the terms and conditions set forth below.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. Notice of this application appeared in the Commission's Daily Calendar of August 28, 2001.
2. Applicants seek approval pursuant to Pub. Util. Code § 854 of an internal reorganization that will result in a change of control of Touch America.
3. Touch America is authorized to provide interexchange services in California, as well as in 43 other states.
4. There will be no change in name, current services or rates provided by Touch America as a result of the change of control.

### **Conclusions of Law**

1. The proposed change of control is not adverse to the public interest.
2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
3. The application should be approved.

### **O R D E R**

#### **IT IS ORDERED** that:

1. Montana Power Company and its wholly owned subsidiary, Touch America, Inc. (Touch America) are authorized pursuant to Section 854 of the Public Utilities Code to enter into a reorganization, as more fully described in the application and its exhibits, that will result in a change of control of Touch America.
2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.
3. Touch America shall make all books and records available for review and inspection upon Commission staff request.
4. The authority granted herein shall expire if not exercised within one year of the date of this order.

5. Application 01-08-031 is closed.

This order is effective today.

Dated November 8, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

Commissioner Henry M. Duque, being necessarily  
absent, did not participate.